

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

James T. Wardlaw  
SSN XXX-XX-1793  
Holly A. Wardlaw  
Holly A. Evans  
SSN XXX-XX-6287  
Debtor.

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**CASE NO. 04-34367 GFK**

**NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY**

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. RBMG, Inc. (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 19, 2004, at 10:30 a.m., or as soon thereafter as counsel can be heard, before the Honorable Gregory F. Kishel in Courtroom 228B of the above entitled Court located at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 14, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 8, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on July 28, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1.

Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$84,000.00, as evidenced by that certain Promissory Note dated May 27, 2003, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated May 27, 2003, executed by James T. Wardlaw, II and Holly A. Wardlaw, husband and wife, a copy of which is attached hereto as Exhibit "B". The name and address of the original creditor is contained in the attached Exhibit "B". The property is located in Ramsey County, Minnesota and is legally described as follows to-wit:

The Easterly 30 feet of Lot 4, Block 25, Lyman Dayton's Addition to the City of St. Paul, Ramsey County, Minnesota AND The West 10 feet of Lot 4 and the East Half of Lot 5, Block 25, Lyman Dayton's Addition to the City of St. Paul, according to the recorded plat thereof, and situate in Ramsey County, Minnesota.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 29, 2004, Debtor is delinquent in the making of monthly payments as required for the months of July, 2004 through September, 2004, inclusive, in the amount of \$917.56 each; accruing late charges of \$91.76 and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

**WHEREFORE**, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be terminated so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 29th day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Loan No. 2000318194

**NOTE**

MIN 1000144-2000318194-0

May 27, 2003  
[Date]

MAY 03 2003

[City]

[State]

699 E. 4TH STREET, SAINT PAUL, MINNESOTA 55106  
[Property Address]**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 84,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is RBMG, INC., a DELAWARE Corporation. I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 5.500%.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

**3. PAYMENTS****(A) Time and Place of Payments**

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the FIRST day of each month beginning on July 1, 2003. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on June 1, 2018, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at PO BOX 100155, COLUMBIA, SOUTH CAROLINA 29202-3155 or at a different place if required by the Note Holder.

**(B) Amount of Monthly Payments**

My monthly payment will be in the amount of U.S. \$ 686.35.

**4. BORROWER'S RIGHT TO PREPAY**

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

**5. LOAN CHARGES**

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

**EXHIBIT***A*

**UNIVERSAL TITLE COMPANY**  
 hereby certifies that this copy is a  
 true and correct copy of the original.

By: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

[Space Above This Line For Recording Data]

## MORTGAGE

Return To:

MIN 1000144-2000318194-0

RBMG, INC.  
 PO BOX 100155  
 COLUMBIA, SOUTH CAROLINA 29223  
 Attn: SHIPPING DEPT./DOC. CONTROL

### DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated May 27, 2003, together with all Riders to this document.

(B) "Borrower" is James T. Wardlaw II and Holly A. Wardlaw, husband and wife. Borrower is the mortgagor under this Security Instrument.

(C) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the mortgagee under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.

(D) "Lender" is RBMG, INC., a DELAWARE Corporation. Lender is a corporation organized and existing under the laws of the State of DELAWARE. Lender's address is PO BOX 100155, COLUMBIA, SOUTH CAROLINA 29202-3155.

(E) "Note" means the promissory note signed by Borrower and dated May 27, 2003. The Note states that Borrower owes Lender Eighty Four Thousand And 00/100 Dollars (U.S. \$ 84,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than June 1, 2018.

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT WITH MERS  
 Page 1 of 16

mmcmertd

Form 3024 1/01

Initials:

*JTW*  
*DAW*

**EXHIBIT B**

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

<input type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input type="checkbox"/> Other(s) [specify]

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

#### TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under

*[Signature]*  
*[Signature]*

this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to MERS (solely as nominee for Lender and Lender's successors and assigns) and to the successors and assigns of MERS, with power of sale, the following described property located in the County [Type of Recording Jurisdiction] of RAMSEY [Name of Recording Jurisdiction]:

**SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART  
HEREOF.**

Parcel ID Number:

699 E. 4TH STREET

SAINT PAUL [City], Minnesota 55106 [Zip Code] ("Property Address");

which currently has the address of  
[Street]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Security Instrument, but, if necessary to comply with law or custom, MERS (as nominee for Lender and Lender's successors and assigns) has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling this Security Instrument.

**BORROWER COVENANTS** that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

**THIS SECURITY INSTRUMENT** combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

**UNIFORM COVENANTS.** Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the

*[Signature]*  
*[Signature]*

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

\_\_\_\_\_  
*James T. Wardlaw II* (Seal)  
JAMES T. WARDLAW II -Borrower

\_\_\_\_\_  
*Holly A. Wardlaw* (Seal)  
Holly A. Wardlaw -Borrower

\_\_\_\_\_  
\_\_\_\_\_  
(Seal)  
-Borrower

\_\_\_\_\_  
\_\_\_\_\_  
(Seal)  
-Borrower

STATE OF MINNESOTA, Hennepin

County ss:

On this 27th day of May, 2003, before me appeared  
JAMES T. WARDLAW II and Holly A. Wardlaw, husband and wife  
to me personally known to be the person(s) described in and who executed the foregoing instrument and  
acknowledged that he/she/they executed the same as his/her/their free act and deed.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

This instrument was drafted by:  
RBMG, Inc.  
PO Box 100155  
Columbia, SC 29223

Tax statements for the real property described in this instrument should be sent to:  
RBMG, Inc.  
PO Box 100155  
Columbia, SC 29223

File No: 183903 (lmd)

**EXHIBIT 'A'**

**The Easterly 30 feet of Lot 4, Block 25, Lyman Dayton's Addition to the City of St. Paul, Ramsey County, Minnesota**

**AND**

**The West 10 feet of Lot 4 and the East Half of Lot 5, Block 25, Lyman Dayton's Addition to the City of St. Paul, according to the recorded plat thereof, and situate in Ramsey County, Minnesota  
A.P.N. 322922140234**

200318194 - Woodlaw

Initials

P. 02

FAX NO.

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

James T. Wardlaw  
SSN XXX-XX-1793  
Holly A. Wardlaw  
Holly A. Evans  
SSN XXX-XX-6287

**CASE NO. 04-34367 GFK**

Debtor.

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**MEMORANDUM IN SUPPORT OF  
MOTION FOR RELIEF FROM STAY**

**ARGUMENT**

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 29, 2004, Debtor is delinquent for monthly payments for the months of monthly payments as required for the months of July, 2004 through September, 2004, in the amount of \$917.56 each; accruing late charges of \$91.76 and attorneys fees and costs of \$700.00.
2. Debtor has failed to make any offer of adequate protection.

**CONCLUSION**

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

. . .

. . .

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 29th day of September, 2004.

**WILFORD & GESKE**

By /e/ James A. Geske

James A. Geske  
Attorneys for Secured Creditor  
7650 Currell Blvd., Ste 300  
Woodbury, MN 55125  
651-209-3300  
Attorney Reg. No. 14969X

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

**CHAPTER 7 CASE**

**CASE NO. 04-34367 GFK**

James T. Wardlaw  
SSN XXX-XX-1793  
Holly A. Wardlaw  
Holly A. Evans  
SSN XXX-XX-6287

**AFFIDAVIT OF  
JASON JOHNSON**

Debtor.

Jason Johnson, being first duly sworn on oath, deposes and states:

1. That he is the Bankruptcy Specialist of RBMG, Inc.

2. RBMG, Inc., is now the holder of a mortgage on real property in which the debtor has an interest. The debtor's indebtedness is evidenced by that certain mortgage deed dated May 27, 2003, executed by James T. Wardlaw II and Holly A. Wardlaw, husband and wife. The property is located in Ramsey County, Minnesota and is legally described as follows, to-wit:

The Easterly 30 feet of Lot 4, Block 25, Lyman Dayton's Addition to the City of St. Paul, Ramsey County, Minnesota AND The West 10 feet of Lot 4 and the East Half of Lot 5, Block 25, Lyman Dayton's Addition to the City of St. Paul, according to the recorded plat thereof, and situate in Ramsey County, Minnesota.

3. That he has reviewed the account records relating to the Wardlaw's mortgage loan, account no. 2000318194.

4. That as of September 20, 2004, the following amounts were owing on this account:

Unpaid Principal:	\$80,290.85
Interest through September 20, 2004	1,342.99
Attorney's Fees:	700.00
Late Charges:	91.76
Escrow Advance:	696.42
Other Fees:	20.00
<b>TOTAL:</b>	<b>\$83,142.02</b>

5. That the mortgage loan is delinquent for monthly mortgage payments for the months of July, 2004 through September, 2004 in the amount of \$917.56 each.

6. This affidavit is given in support of the motion of RBMG, Inc. for relief from the automatic stay.

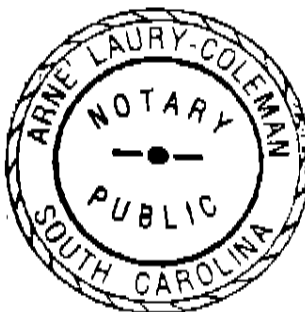
RBMG, INC.

By

*Jason A. Johnson*  
Its Bankruptcy Specialist - Jason Johnson

Subscribed and sworn to before me  
this 20 day of September, 2004.

*Arne Laury-Coleman*  
Notary Public - Arne Laury-Coleman  
Commission Expires: 08-17-2009



**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

James T. Wardlaw  
SSN XXX-XX-1793  
Holly A. Wardlaw  
Holly A. Evans  
SSN XXX-XX-6287

**CASE NO. 04-34367 GFK**

Debtor.

**UNSWORN DECLARATION  
FOR PROOF OF SERVICE**

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Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 29, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Jason Johnson, and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

James T. Wardlaw  
Holly A. Wardlaw  
699 E 4<sup>th</sup> St  
St. Paul, MN 55106

John A. Hedback  
2855 Anthony Ln S Ste 201  
St. Anthony, MN 55418

David D. Kingsbury  
Kingsbury & Associates, LTD  
14827 Energy Way  
Apple Valley, MN 55124

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4<sup>th</sup> Street  
Minneapolis, MN 55415

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 29th day of September, 2004.

/e/ Joanna Cheyka  
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

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In Re:

**CHAPTER 7 CASE**

James T. Wardlaw  
SSN XXX-XX-1793  
Holly A. Wardlaw  
Holly A. Evans  
SSN XXX-XX-6287

**CASE NO. 04-34367 GFK**

Debtor.

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**ORDER**

The above entitled matter came on for hearing upon motion of RBMG, Inc. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 19, 2004, at U.S. Courthouse, 316 North Robert Street, St. Paul, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated May 27, 2003, executed by James T. Wardlaw, II and Holly A. Wardlaw, husband and wife, covering real estate located in Ramsey County, Minnesota, legally described as follows, to-wit:

The Easterly 30 feet of Lot 4, Block 25, Lyman Dayton's Addition to the City of St. Paul, Ramsey County, Minnesota AND The West 10 feet of Lot 4 and the East Half of Lot 5, Block 25, Lyman Dayton's Addition to the City of St. Paul, according to the recorded plat thereof, and situate in Ramsey County, Minnesota

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Bankruptcy Court